

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re

LUTHER AND LYNDY WRIGHT,

No. 07-10375

Debtor(s).

Memorandum re Marijuana Cultivation and Chapter 13

Debtors Luther and Lyndy Wright cultivate marijuana for sale to medical clinics. Their business is perfectly legal under California law and the debtors obey all state laws and pay taxes just like any other business owners. They have proposed a Chapter 13 plan which relies upon income from their cultivation. Unfortunately for them, marijuana cultivation is still a federal crime. The U.S. Trustee and the Chapter 13 trustee have objected to their plan. The U.S. Trustee also seeks dismissal, arguing that the debtors are not eligible for Chapter 7.


In order to have a plan confirmed, the debtors must show, pursuant to § 1326(a)(3) of the Bankruptcy Code, that their plan is proposed in good faith and not by any means forbidden by law. While the court has no problem finding that the Wrights have filed their plan in good faith, the court interprets the section as barring confirmation of a plan which relies on an activity forbidden by any law. Since federal law makes their business a crime, it is no saving grace that the business is lawful under state law.

The court finds the U.S. Trustee's arguments regarding the unavailability of Chapter 7 to be both flawed and premature. The mere fact that a trustee cannot liquidate the debtor's assets does not make the debtor ineligible for Chapter 7 relief. In a non-individual case, inability to liquidate an estate may well render a Chapter 7 case pointless and subject to dismissal. However, in an individual Chapter 7 case there are two purposes: liquidation of an estate and discharge of a debtor. The ability to liquidate an estate is not a

1 prerequisite to a discharge. In any event, this discussion is moot until and unless the debtors seek relief in
2 Chapter 7.

3 For the foregoing reasons, confirmation will be denied. The case will be dismissed on the tenth day
4 after entry of an appropriate order unless the debtors have converted the case to Chapter 7 or proposed a
5 plan which does not rely on illegal activity. The motion of the U.S. Trustee will be denied without prejudice.
6 The Chapter 13 trustee shall submit an appropriate form of order.

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8 Dated: August 3, 2007

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11 Alan Jaroslovsky
12 U.S. Bankruptcy Judge
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